IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.13822 of 2007

1. ATHAR IMAM , S/o Tahir Hussain
2. Tahir Hussain, S/o Late Israil Mian
3. Sakir Hussain, S/o Jamaluddin
4. Taki Imam, S/o Tahir Hussain

All are residents of village Chandi, P.S. Charpokhari, District – Bhojpur

……. Petitioners

Versus

1. STATE OF BIHAR
2. Md. Mozaffar Hussain, residents of village Chandi, P.S. Charpokhari, District – Bhojpur

……. Opp. Parties

For the petitioner : M/s Baxi S.R.P. Sinha, Sr. Advocate
Suresh Kumar, Advocate
For the State : Mr. Jharkhandi Upadhaya, A.P.P.
For O.P. No. 2 : None

O R D E R

This is an application by four F.I.R. named accused of Sessions Trial No. 309 of 2006 arising out of Charpokhari P.S. Case No. 163 of 2004, whereby they have prayed for quashing of order dated 22.2.2007 passed by the learned Presiding Judge, Fast Track Court No. II, Bhojpur at Ara, whereunder the petition under section 228(1) (a) Cr.P.C. filed by the petitioners has been rejected. An additional prayer has been made for direction by this Court for their trial by a Judicial Magistrate.

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Briefly stated the prosecution case is that one Md. Muzaffar Hussain, impleaded herein as O.P. No. 2, filed a written report inter alia alleging at about 11 A.M. on 5.12.2004 the petitioners and others entered into the house of the informant and started assaulting by means of fists and slaps and when the father of the informant rushed to save him he was thrown onto the ground and assaulted by means of *lathi* and rod by the accused persons.

Jannat Hussain, the father of the informant, fell unconscious and the accused persons took away boxes containing valuables. The genesis for the occurrence was said to be establishment of supremacy over petty altercation for playing with tops between the children of the parties.

It appears that the injured Jannat Hussain was first removed to the Charpokhari Hospital, from where he was referred to Ara Sadar Hospital and from the injury report it would appear that the injury attributed to the deceased was only a simple bruise on the head and other parts of the body. A chargesheet was submitted against all the four persons for offences under sections 341, 323, 448, 307, 379, 504/34 IPC and accordingly cognizance was taken and the case was committed to the Court of Sessions.

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The grievance of the petitioners is that the ingredients of the offence under section 307 IPC had not been made out and the case was otherwise triable by a Judicial Magistrate and as such a prayer was made for not framing any charge for offence under section 307 IPC and to remit the case back to the learned Chief Judicial Magistrate for Magisterial trial.

It appears that the X-ray of the head of the injured Jannat Hussain revealed fracture of parietal bones and the counter affidavit shows that injured Jannat remained in hospital for 14 days. The assertions on behalf of the petitioners that they have reasons to believe that the written report and the X-ray report are tainted documents, the reason being that the written report was supposedly

received at 15.05 hrs. whereas the investigation and the case diary commenced at 13.05 hrs. itself and that to the best of their knowledge there is no provision for treating of head injury with fracture at the Ara Sadar hospital.

Unfortunately this is not the stage to weigh the evidence and the allegations of the petitioners of the documents being tainted can only be thrashed out in course of the trial by leading cogent evidence in that regard. That apart the learned Presiding Judge in the impugned order has assigned cogent reasons for rejecting the petition of the petitioners for their discharge from commission of offences under section 307 IPC.

I find no apparent illegality in the impugned order dated 22.2.2007. Accordingly the application is dismissed being devoid of any merit.

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(Abhijit Sinha, J.)

The Patna High Court,
Dated the 12th December, 2008
Sanjay Pd/ A.F.R.